

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Ellen Gavin
Marshall Johnson
LeRoy Koppendrayner
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of City of
Hutchinson (Hutchinson Utilities Commission)
for a Certificate of Need to Construct a Large
Natural Gas Pipeline

ISSUE DATE: December 13, 2002

DOCKET NO. G-252/CN-01-1826

ORDER GRANTING CERTIFICATE OF
NEED AND VARYING FEE PAYMENT
RULE

PROCEDURAL HISTORY

I. Initial Proceedings

On December 13, 2001, the Hutchinson Utilities Commission (Hutchinson or HUC) submitted its application for a certificate of need. Hutchinson proposes to construct, own and operate an 89 mile long natural gas pipeline between Trimont, Minnesota and Hutchinson, Minnesota. The proposed pipeline is a “large energy facility” as defined in Minn. Stat. § 216B.2421, subd. 2(4). Therefore, Hutchinson must receive a certificate of need prior to construction under the provisions of Minn. Stat. § 216B.243.

On December 24, 2001, the Commission issued its ORDER EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING, thus giving all parties additional time to review the filing.

On January 14, 2002, in response to comments submitted by the Department of Commerce (DOC), Hutchinson submitted revised portions of its application, a letter from New Ulm Public Utilities dated December 31, 2001, and a copy of a letter from Hutchinson to Northern Natural Gas Company (Northern).

On January 30, 2002, the Commission issued its ORDER ACCEPTING FILING AS SUBSTANTIALLY COMPLETE UPON RECEIPT OF CERTAIN INFORMATION AND NOTICE AND ORDER FOR HEARING, and referred the matter to the Office of Administrative Hearings for a contested case proceeding. Chief Administrative Law Judge Kenneth A. Nickolai was assigned this matter.

On March 4, 2002, Northern’s February 22, 2002 proposal, and Hutchinson’s analysis comparing the economics of that proposal to the proposed pipeline were filed, satisfying the condition set by the Commission for concluding the application was substantially complete.

On October 9, 2002 the Administrative Law Judge (ALJ) submitted his Findings of Fact, Conclusions and Recommendation. The ALJ recommended that a Certificate of Need for a new large energy facility be granted to the City of Hutchinson (Hutchinson Utilities Commission).

On October 24, 2002, the City of Hutchinson and Minnesota Municipal Utilities Association filed joint comments on the issue of the Commission's regulation of the proposed pipeline. Also on October 24, 2002, the DOC and CenterPoint Energy Minnegasco filed comments on this issue.

On October 24, 2002, Northern filed a Memorandum of Law (regarding the Commission's regulation of the proposed pipeline) and Exceptions to the ALJ's Findings of Fact, Conclusions of Law and Recommendation.

On October 29, 2002, the City of Hutchinson and Minnesota Municipal Utilities Association filed reply comments on the issue of the Commission's regulation of the proposed pipeline. Reply comments were also filed on this date by the DOC, Northern and CenterPoint Energy Minnegasco on this issue.

II. The Parties and their Representatives

The City of Hutchinson (Hutchinson Utilities Commission) was represented in the proceedings before the ALJ by Bruce E. Hanson, Oppenheimer, Wolff and Donnelly, Plaza VII, 45 South Seventh St., Suite 3300, Minneapolis, Minnesota 55402-1609.

Northern Natural Gas Company was represented by Eric F. Swanson, Winthrop & Weinstine, 3200 Minnesota World Trade Center, 30 East Seventh St., St. Paul, Minnesota 55101-4919, and James R. Talcott, Senior Counsel, Northern Natural Gas Company, 111 South 103rd Street, Omaha, Nebraska 68124.

Reliant Energy Minnegasco was represented by and Brenda Bjorklund, P.O. Box 59038, 800 LaSalle Avenue, Fl. 11, Minneapolis, Minnesota 55459-0038.

Sibley-Renville Future Agricultural Interests Recognized, Inc. was represented by Rebecca Comstock, Dorsey & Whitney, 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota 55402-1498 (representation later withdrawn).

The DOC was represented by Julia E. Anderson, Assistant Attorney General; and Linda S. Jensen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106.

III. Public and Evidentiary Hearings

Public hearings were held on May 15, 2002, in Hutchinson and on May 16, 2002, in Sleepy Eye. Evidentiary hearings were held on June 5, 2002, July 22 and 23, 2002 in St. Paul.

Approximately twenty-two public and community officials, company representatives and citizens either testified or submitted written comments in support of Hutchinson's proposal. Approximately sixteen landowners testified or submitted written comments about their concerns or opposition to Hutchinson's proposal.

IV. Proceedings before the Commission

On November 26, 2002, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

The Commission need not and will not reach the issue of whether the proposed pipeline, upon completion, would be subject to Commission regulation under Minn. Stat. § 216B.045. The only issue considered herein is whether the certificate of need should be granted.

I. Factual Background

Hutchinson Utilities Commission is a municipal public utilities commission which, since 1960, has provided natural gas service to its customers. It transports natural gas on Northern Natural Gas Company's transmission lines to meet the needs of the City of Hutchinson and the Hutchinson Utilities Commission. The natural gas is used by HUC to generate electricity and for heating. HUC has nine electric generating units and sells electricity at wholesale to other electricity providers. HUC's commercial/industrial customers also use natural gas in their production processes. HUC currently uses 3.2 Bcf (Billion cubic feet) of natural gas per year. Approximately 73% is used to generate electricity and 27% is consumed by HUC's industrial, commercial and residential customers.

The current winter contracted-for capacity available to HUC from Northern is 17,253 Dth per day, with a contracted for minimum delivery pressure of 450 psig. HUC's peak winter load in the years 1996-2001 was 16,695 per day, operating at 97% of contracted-for capacity. The current summer contracted-for capacity available to HUC from Northern is 14,380 Dth per day with a minimum delivery pressure of 450 psig. HUC's peak summer load in the years 1996-2001 was 18,291 Dth per day, operating at 127% of contracted- for capacity.

Hutchinson proposed building an 89 mile long pipeline between Trimont, Minnesota and Hutchinson, Minnesota that will connect with the Northern Border Pipeline Company in Martin County, Minnesota and provide an alternative to the Northern Natural Gas Company Pipeline. The pipeline will be used to transport natural gas to the City of New Ulm, New Ulm's electric generating facilities, the City of Hutchinson and Hutchinson Utilities Commission's electric generating facilities.

The proposed pipeline will be designed for a capacity of 60,000 million cubic feet (Mcf)/day through 34 miles of 16-inch diameter pipe (from Trimont to New Ulm) and 40,000 Mcf/day through 55 miles of 12-inch diameter pipe (from New Ulm to Hutchinson). HUC estimated that the cost of this project would be approximately 26 million dollars. The pipeline will deliver gas to the City of Hutchinson at a pressure of 800 pounds per square inch gauge (psig), an increase from the current delivery pressure of 450 psig.

Hutchinson proposed beginning construction in May, 2003 and having the pipeline in service by November, 2003.

II. ALJ's Findings on Certificate of Need Criteria

The factors, information and criteria to consider in granting a certificate of need are set forth in Minn. Stat. § 216B.243 and Minn. Rules, parts 7851.0100 through 7851.0400.

Minn. Rule 7851.0120 sets forth four criteria which must be met in order to establish need for the proposed pipeline. Each of these criteria and some of the ALJ's findings concerning them will be discussed below.

A. The probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.

The ALJ stated he was persuaded that denying this certificate of need would have adverse effects on the future adequacy, reliability and efficiency of the energy supply to affected persons. The ALJ found that the record established that there was an immediate need for additional capacity on peak days, that the Northern pipeline is currently capacity constrained, and that HUC needs to maintain gas service to its customers while generating electricity using its gas-fired generating capacity.

Further, the ALJ found that there was sufficient evidence to support that HUC's demand for natural gas in the future will continue to grow. He found that since the current level of demand is, at times, capacity constrained on the Northern pipeline, additional pipeline capacity is necessary.

B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.

Northern made the argument that the law places the burden on HUC to demonstrate that there is no more reasonable and prudent alternative, and that HUC failed to meet that burden. The ALJ was not persuaded by that argument and indicated that the rule clearly places the burden "by a preponderance of the evidence" on parties "other than the applicant" to demonstrate there is a more reasonable and prudent alternative.

The record contains an analysis of the relative costs of two financial proposals made by Northern to HUC. The ALJ considered a February 22, 2002 proposal which required HUC to make an initial down payment and annual capacity reservation payments for each year of the contract. It also required HUC to pay Northern's maximum demand and commodity surcharges approved by the Federal Energy Regulatory Commission (FERC), in effect today or placed into effect in the future. The proposal was not specific regarding meeting anticipated demands after 2011.

The ALJ found that using a 20 year time frame, on a present value basis, the HUC-proposed natural gas pipeline was substantially less expensive than Northern's February 22, 2002 proposal. The ALJ indicated that he was persuaded that the February 22, 2002 offer was not a more reasonable and prudent alternative to the proposed pipeline because of the February 22, 2002 offer's cost and its failure to address the longer term needs.

The second offer by Northern, the April 24, 2002 offer, extended the currently contracted firm market area entitlement for eight years and allowed for an increase in firm entitlement beginning November 1, 2003 for an initial term of eight years. The proposal did not provide assurance of additional supplies past 2011, when HUC anticipates placing an additional gas fired generator on-line.

The ALJ found that this offer would be more cost-effective in a 20 year time frame, if the cost of construction exceeded \$31 million. However, when examined over a 40 year expected physical life of the proposed pipeline, the April 24th offer was more expensive. The ALJ indicated that because this proposal failed to address the likely need for increased capacity beginning in 2011, he was persuaded that this was not a more reasonable or prudent alternative.

C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

The ALJ concluded that the consequences of granting the certificate are more favorable than a denial. He stated that the project will increase the supply of natural gas in an area of the state that has a constrained supply. The project will allow a more reliable supply of energy to that portion of the state encouraging economic development and permitting more electric generation, thereby reducing the need for HUC to purchase electricity from others at peak times.

The ALJ cited other benefits such as increased investment of \$26 million in the economy, an increase in employment and a short-term increase in the sales and income tax base.

D. The record does not demonstrate that the design, construction, or operation of the proposed facility will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

Further, the ALJ concluded that the record supports the conclusion that HUC intends to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

The ALJ concluded that the requirements for a Certificate of Need as set forth in Minn. Stat. § 216B.243 and Minn Rules, part 7851 have been satisfied.

III. Exceptions to the ALJ's Report

Northern was the only party that filed exceptions to the ALJ's Findings of Fact, Conclusions and Recommendation.

Northern claimed that the ALJ's findings would remove from HUC the burden of demonstrating the need for its proposed pipeline and instead place the burden of disproving the need on Northern.

Regarding the ALJ's conclusion that failure to complete the proposed pipeline would adversely affect the future adequacy, reliability, efficiency and cost-effectiveness of the natural gas supply to the City of Hutchinson, Northern argued that:

- (1) HUC failed to provide an accurate and reliable forecast to support its filing;
- (2) HUC failed to show need justifying a pipeline with the capacity to move 40,000 Mcf per day;
- (3) HUC's future electric generation needs are unclear; and
- (4) Northern's offers can meet HUC's needs.

Regarding Northern's February and April offers Northern argued:

- (1) the ALJ's conclusion that none of the alternatives examined are as reasonable or prudent as the proposed pipeline was based on a faulty comparative cost analysis;
- (2) HUC never provided the necessary evidence to demonstrate the cost of energy to be supplied by its proposed pipeline;
- (3) the ALJ's findings assume a 4.9% discount rate, which may not be available to HUC; and
- (4) the ALJ did not fully address the environmental impacts associated with HUC's proposal.

IV. Commission Action

A. Certificate of Need Granted

The ALJ found that the application substantially conforms to the requirements of the applicable statutes and rules, as interpreted by the Commission, and recommended that the Commission grant the requested Certificate of Need. The Commission has examined the full record in this case, and its reading of the evidence leads to the same findings and conclusions reached by the Administrative Law Judge. The issues raised by Northern in its Exceptions are not new and were adequately addressed by the ALJ. The Commission concurs in and adopts the ALJ's Findings of Fact, Conclusions of Law and Recommendation. The Commission will grant the Certificate of Need, with the conditions noted below.

The Commission will limit the time period under which the certificate is valid to six years in order to take into account the possibility of changed future circumstances. Further, the Commission will require HUC to notify the Commission if the project is cancelled, if there is any major change in plans with respect to the route, the construction timetable or the expected in-service date.

B. Fee Payment Rule Varied

Under Minn. Rules, part 7851.0210, subp. 3, certificates of need are not to be issued until all regulatory fees owed by the applicant are paid in full. At this time, it is impossible to calculate HUC's final fees, because final time records are not yet available from the Office of Administrative Hearings, the Department of Commerce, the Office of the Attorney General, and Commission staff.

HUC wishes to begin construction as soon as possible and asks that the certificate be issued immediately.

Under Minn. Rules 7829.3200 the Commission may vary any of its rules upon making the following findings:

- (1) enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) granting the variance would not adversely affect the public interest; and
- (3) granting the variance would not conflict with standards imposed by law.

The Commission will vary Minn. Rules 7851.0210, subp. 3 and issue the certificate of need today, based on the following findings:

- (1) enforcing the prepayment requirement would impose an excessive burden on HUC and others who will benefit from the system expansion by delaying construction, thereby delaying the in-service date of the system expansion;
- (2) varying the prepayment requirement would not adversely affect the public interest, which would be adequately protected by HUC making an unconditional commitment to pay all regulatory fees incurred in the course of this proceeding;
- (3) varying the prepayment requirement would not conflict with any statutory or other legal requirement.

The Commission will so order.

ORDER

1. The Commission accepts, adopts and incorporates herein the ALJ's Findings of Fact, Conclusions of Law and Recommendation.
2. The Certificate of Need requested by Hutchinson is granted, subject to the following conditions:
 - (a) construction shall commence within six years;
 - (b) Hutchinson shall notify the Commission of any significant change in plans regarding the route, construction timetables, and in-service date.
3. Minn. Rules, part 7851.0210, subp. 3 is hereby varied to permit the Commission to bill for, and the applicant to pay, any additional fees after the certificate of need decision is made and when the additional costs are known. Hutchinson shall submit a written commitment to pay additional statutory fee assessments, up to the statutory maximum.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).